

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF:
JAMES PICKARD
NPN 132398

PETITIONER

A.I.D. NO. 2022-11

ORDER

On this day, the matter of the resident insurance producer license application of Mr. James Pickard ("Petitioner") came before Alan McClain, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held on October 26, 2021, in the Hearing Room of the Arkansas Insurance Department ("Department") pursuant to the Notice of Hearing dated October 21, 2021. The hearing was held before Hearing Officer Dan Honey ("Hearing Officer") pursuant to his appointment by the Commissioner in accordance with Ark. Code Ann. § 23-61-103(e)(1). Petitioner, James Pickard, was present and was represented by his attorney, Mr. Oscar Hirby. The Department was represented by Gray Allen Turner, Associate Counsel.

FINDINGS OF FACT

1. Petitioner, a resident of Perry County, Arkansas, applied for an insurance producer license on September 20, 2021.
2. Petitioner was previously a licensed insurance producer. Petitioner's insurance license was revoked in 2008. In 2006, there was a complaint made to the Department by Mrs. Flossie Lee regarding terminated premium coverage. In February of 2007, theft of property charges were filed and an arrest warrant was issued against Petitioner. In July of 2007, Petitioner pled guilty to misdemeanor theft of property. Petitioner's insurance license was revoked in AID Order 2008-44 in which the Commissioner found that Petitioner failed to send customer premium to an insurer.
3. Petitioner, in his 2021 insurance producer license application: (1) did

not disclose the misdemeanor theft conviction that was the basis of his license revocation; (2) did not provide charging or conviction documents as to the misdemeanor conviction; (3) did not provide with his application an explanation of this 2006 crime and 2007 misdemeanor conviction for theft of insurance premiums. There is no evidence to suggest Petitioner's prior misdemeanor conviction is sealed or expunged.

4. Petitioner did not provide a written explanation of his 2008 insurance license revocation as was required to make his answers to the background questions in his insurance producer license application accurate and complete. In his testimony as to the facts that led to his 2007 theft conviction and 2008 license revocation, Petitioner was either unable to recall or unwilling to explain those circumstances.

5. Petitioner pled guilty to theft of property, a felony, in 2010. This conviction was properly expunged and Petitioner is not considered a felon for licensing purposes.

6. Since 2010, Petitioner has not been convicted of any further criminal offenses.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction pursuant to the Arkansas Insurance Code, specifically Ark. Code Ann. §§ 23-60-101, *et seq.*

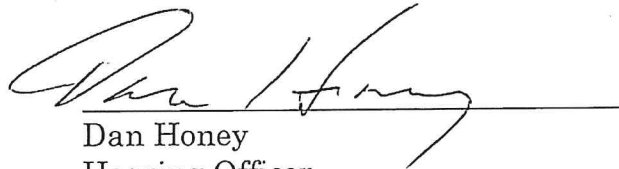
2. Petitioner has presented sufficient evidence to be deemed by the Commissioner to be trustworthy as required by § 23-64-506(a)(2).

3. Petitioner has presented sufficient evidence to be granted an 18 U.S.C § 1033 waiver for permission to work in the business of insurance.

RECOMMENDATION OF THE HEARING OFFICER

WHEREFORE, upon consideration of the evidence of record and the foregoing Findings of Fact and Conclusions of Law, the Hearing officer recommends the following:

1. That the Arkansas resident insurance producer license application of the Petitioner be granted.
2. That Petitioner's request for an 18 U.S.C. § 1033 waiver for permission to work in the business of insurance be granted.


Dan Honey
Hearing Officer

CERTIFICATION

I, Alan McClain, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Officer were made by and under my authority and supervision by Dan Honey, the Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact.

However, for the reasons outlined below, I decline to adopt the Hearing Officer's Conclusions of Law and Recommendation, and instead, render the following:

COMMISSIONER'S CONCLUSIONS OF LAW

1. Petitioner, as an applicant for licensure, failed to provide written explanations of his prior misdemeanor convictions and the prior revocation, as described in Findings of Fact 3 and 4. His application was therefore materially incomplete, and these actions violate Ark. Code Ann. § 23-64-506(a)(2) which require him to be deemed trustworthy by the Commissioner.
2. Assuming the Department has the burden of searching its files of any prior disciplinary actions against Petitioner, this argument still lacks merit because the prior revocation records, at the time Petitioner made his application for licensure, were no longer required to be kept by the Department due to State record retention guidelines.
3. Petitioner's testimony at the hearing, whereby he was either unable or unwilling to recall the circumstances that led to the 2007 misdemeanor conviction and his 2008 license revocation, rings hollow because of his inability to provide the explanations. He cannot therefore be deemed trustworthy by the Commissioner as required by Ark. Code Ann. § 23-64-506(a)(2).
4. The sealing or expungement of Petitioner's felony conviction, as described in Finding of Fact 5, nullifies the consideration of this conviction when determining

whether to grant licensure. Petitioner is therefore ineligible to receive a waiver under 18 U.S.C. § 1033.

THEREFORE, it is hereby ORDERED that:

1. The Arkansas resident insurance producer license application of Petitioner, James Pickard, is **denied**. This denial is consistent with Department precedent in denying licensure to those applicants who have previously undergone a prior producer license revocation.
2. Petitioner's request for an 18 U.S.C. § 1033 waiver for permission to work in the business of insurance is **denied**. This is because the sealing or expungement of the felony conviction renders him ineligible to receive such a waiver. Further, there are no provisions that prevent Petitioner from working in the insurance industry. Rather, Petitioner may work in the insurance industry as long as he does not engage in any activity which requires a producer's license.

IT IS SO ORDERED THIS 12th DAY OF January, 2022.



ALAN MCCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS